

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-143686-10
Date:
April 08, 2011

Decedent =
Spouse =
Trust =
Accountant =
Date 1 =
Date 2 =

Dear :

This letter responds to your submission dated October 6, 2010, and subsequent correspondence, submitted by your authorized representative, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allocate generation-skipping transfer (GST) exemption to certain transfers.

Facts

On Date 1, Decedent and her spouse, Spouse, established Trust, a revocable trust. Decedent died on Date 2, at which time Trust was divided into four trusts. Three of these trusts, Trust Two, Trust Three-A, and Trust Three-B, are includible in Decedent's gross estate and were established to benefit Spouse and Decedent's and Spouse's living issue. Trust also provided that Decedent's GST exemption should be allocated first to outright generation-skipping transfers, then to Trust Two, with the remaining GST exemption to be allocated to Trust Three-A.

The executor of Decedent's estate filed a timely Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. In addition to reporting other transfers made by Decedent at death on the Form 706, the executor reported Decedent's transfers to the trusts and three outright transfers to each of Decedent's three grandchildren. In preparing the Form 706, Accountant failed to properly allocate Decedent's available GST exemption to the three transfers to the grandchildren and to the transfers to Trust Two and Trust Three-A.

Decedent's executor requests an extension of time to allocate Decedent's available GST exemption to the three transfers to Decedent's three grandchildren and to the transfers to Trust Two and Trust Three-A.

Law and Analysis

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines the applicable rate as the product of the maximum federal estate tax rate and the inclusion ratio with respect to the transfer.

Under § 2642(a)(1), the inclusion ratio with respect to any property transferred in a generation-skipping transfer is generally defined as the excess (if any) of 1 over the applicable fraction. The applicable fraction, as defined in § 2642(a)(2), is a fraction, the numerator of which is the amount of GST exemption allocated to the trust (or to property transferred in a direct skip), and the denominator of which is the value of the property transferred to the trust or involved in the direct skip.

Section 2631(a), as effective in the year at issue, provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption amount which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 2632(a) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 26.2632-1(d)(1) of the Generation-Skipping Tax Regulations provides, in part, that an allocation of a decedent's unused GST exemption by the executor of the decedent's estate is made on the appropriate timely filed (including any extensions actually granted) estate tax return. An allocation of GST exemption with respect to property included in the gross estate of a decedent is effective as of the date of death. An allocation of GST exemption to a trust (whether or not funded at the time the Form 706 is filed) is effective if the notice of allocation clearly identifies the trust and the amount of the decedent's GST exemption allocated to the trust.

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make

an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of § 2642(g).

Section 2642(g)(1)(B) provides that in determining whether to grant relief under § 2642(g)(1), the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a generation-skipping transfer trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has the discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Section 301.9100-3(a) provides, in part, that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b)(1)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Accordingly, an extension of time of 120 days from the date of this letter is granted in which to allocate Decedent's available GST exemption to the three transfers to Decedent's three grandchildren and to the transfers to Trust Two and Trust Three-A.

The allocations should be made on a supplemental Form 706 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. A copy of this letter should be

attached to the supplemental Form 706. A copy of this letter is enclosed for this purpose.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Passthroughs & Special Industries)

By: Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures

Copy for § 6110 purposes (1)
Copy of this letter (1)

cc: